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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) IN-5398CIP	
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<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. (See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>42619</u>		<u>/Samuel J. Haidle/</u> _____ Signature <u>Samuel J. Haidle</u> _____ Typed or printed name <u>248-723-0334</u> _____ Telephone number <u>May 12, 2009</u> _____ Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".			
<input type="checkbox"/> *Total of _____ forms are submitted.			

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Bargnes et al.	Confirmation No.:	4629
Serial No.:	10/705,359	Group Art Unit:	3623
Filed:	November 10, 2003	Examiner:	Chong Cruz, Nadja N.

Attorney Docket No.: IN-5398CIP

Title: METHOD OF DETERMINING AN EFFICIENCY OF A
REPAIR PROCESS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sirs:

In response to the Final Office Action dated January 12, 2009 and the Advisory Action mailed on March 19, 2009, Applicant respectfully requests pre-appeal review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The pre-appeal review is requested for the reasons stated immediately below in the Remarks.

REMARKS

As noted by the Applicant in the Amendment filed on October 13, 2008, the Examiner has properly determined that some limitations claimed in claim 1 are known in the industry. However, as noted on page 10 of the October 13th Amendment and on page 2 of the Request for Reconsideration filed on March 12, 2009, the prior art uncovered by the Examiner is too generic and will produce erroneous measurements that the subject invention is specifically designed to eliminate. Specifically, Applicant contends in both the Amendment and the Request for Reconsideration that the Examiner has failed to uncover a prior art reference that discloses or teaches the following two limitations found in independent claim 1:

- determining a total shop production hours based upon when the repair shop opened and closed for each day between the vehicle production start period and the vehicle production finish period, and

- utilizing a computer to calculate a production process efficiency for a completed repair process by dividing the estimated total labor hours by the total shop production hours thereby revealing a true percentage efficiency of the repair process by calculating the production process efficiency utilizing hours.

As explained in more detail below, there is no disclosure or teaching of determining a total shop production hours based on when a shop opens and closes. Therefore, because the total shop production hours is not determined, the production process efficiency, as defined, is likewise not calculated because one component of the calculation requires the total shop production hours.

In the Final Official Action mailed on January 12, 2009, the Examiner uncovered a new reference (known as Baldwin et al.) that purportedly disclosed the novel and non-obvious features of the claimed invention as set forth above. Applicant respectfully disagreed in the Request for Reconsideration and noted that Baldwin et al. was merely cumulative, see page 3. In response, the Examiner mailed an Advisory Action on March 19, 2009 and noted that:

one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references

This response is completely misplaced as the Applicant is NOT attacking the nonobviousness of the combination. Instead, the Applicant contends that the Examiner has misinterpreted Baldwin et al. and that Baldwin et al. does not disclose or teach the feature at all. As such, even with the purported combination, critical limitations of claim 1 are not disclosed or taught by the prior art of record. Therefore, Applicant respectfully asserts that clear error has been made in the Examiner's rejections based on Baldwin et al. As such, Applicant asserts that the Examiner has not established the requirements for a *prima facie* rejection of the claims based on 35 U.S.C. 103. The following is an explanation of the Baldwin et al. reference as it applies to claim 1 of the subject invention and is taken in large part from pages 2 and 3 of the Request for Reconsideration

Baldwin et al. is a research report sponsored by the U.S. Air Force, which is entitled "Transfer Pricing for Air Force Depot-Level Repairables". On page 7 of the January 12th Official Action, the Examiner contends that Baldwin et al. discloses and teaches of

developing an efficiency using total shop production hours. The Examiner contends that the following footnote in Baldwin et al. provides a basis for this teaching:

[t]he DLE for a repair shop is the total standard hours for all work in the shop divided by the actual hours for all work in the shop, that is, an average efficiency.

It is respectfully submitted that the Examiner is incorrect and has misinterpreted Baldwin et al. Baldwin et al. actually measures the same variables and produces the same efficiency as the other cited prior art and will in turn produce erroneous measurements that the subject invention is specifically designed to eliminate.

Turning to pages 16 and 17 of Baldwin et al., the DLE, which stands for Direct Labor Efficiency, is a variable of the DPAH, which stands for Direct Product Actual Hours. As stated in Baldwin et al., the DPAH is an estimate of the actual time spent performing a direct labor task.

The key issue that was apparently overlooked by the Examiner is that both of the variables used to calculate the DLE are related to the work, NOT the shop. Note the definition of the term DLE above, which states the DLE is the “total standard hours for all work in the shop divided by the actual hours for all work in the shop” (emphasis added). As such, the DLE calculates hours of the **work only** and does NOT provide any measurement or calculation taking into consideration the hours of the shop. In fact, there is no mention or teaching of determining the total shop production hours based on when the repair shop opens and closes. As such, it is impossible for Baldwin et al. to provide any disclosure or teaching of calculating the efficiency as defined in claim 1 as this efficiency calculation requires the total shop production hours based on when the repair shop opens and closes. Accordingly,

the process of Baldwin et al. will not measure the particular production process efficiency that the claimed invention is designed to produce.

Accordingly, the newly cited Baldwin et al. reference is merely cumulative of the previously cited prior art that was previously overcome. Due to the Examiner's misinterpretations, the requirements for a *prima facie* rejection based on either 35 U.S.C. 103 have **not** been satisfied as there are critical limitations found in claim 1 that are not disclosed or taught by the prior art of record.

Based on the above summary and the correspondence of record, the Applicants believe that the claims in the present application are in condition for allowance, and respectfully request review of the Examiner's position relative to claim 1 and Baldwin et al., prior to Applicant's filing a formal Appeal Brief.

The Commissioner is authorized to charge the Deposit Account No. 08-2789, in the name of Howard & Howard Attorneys PLLC, for any fees or credit the account for any overpayment.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: May 12, 2009

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